UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/895,536	06/29/2001	James S. Magdych	NAI1P008/01.113.01	6511

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Zilka-Kotab, PC
P.O. BOX 721120
SAN JOSE, CA 95172-1120

EXAMINER
AILES, BENJAMIN A

ART UNIT	PAPER NUMBER
2142	

DATE MAILED: 07/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

PTO-90C (Rev. 10/03)

	Application No.	Applicant(s)
	09/895,536	MAGDYCH ET AL.
Office Action Summary	Examiner	Art Unit	
	Benjamin A. Ailes	2142	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE _3_ MONTH(S) FROM
THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed
  after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any
  earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on _28 April 2005_.

2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is
closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) _1-7,10-12,14-20,23-25 and 27-34_ is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) _1-7,10-12,14-20,23-25 and 27-34_ is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All   b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage
application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)
2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3)☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
    Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____ .
5)☐ Notice of Informal Patent Application (PTO-152)
6)☐ Other: _____.

U.S. Patent and Trademark Office
PTOL-326 (Rev. 1-04)   Office Action Summary   Part of Paper No./Mail Date 20050718

DETAILED ACTION

1.   This action is in response to Amendment "B" filed 28 April 2005.

2.   Claims 1-7, 10-12, 14-20, 23-25, 27-34 remain pending.

Claim Rejections - 35 USC § 112

3.   The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of
> making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the
> art to which it pertains, or with which it is most nearly connected, to make and use the same and shall
> set forth the best mode contemplated by the inventor of carrying out his invention.

4.   Claim 31 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply

with the enablement requirement. The claim(s) contains subject matter which was not

described in the specification in such a way as to enable one skilled in the art to which it

pertains, or with which it is most nearly connected, to make and/or use the invention.

Regarding claim 31, the applicants provide no real guidance, example embodiments, or

a real working example in the specification as to how one of ordinary skill in the art is to

utilize the algorithm as claimed and disclosed in the specification in Table 1 on page 11.

Specifically, no real guidance is given as to what F and N represent except for F being a

"deviation factor" and N being a "normalizing factor". Beyond this point, no real

guidance is given to one of ordinary skill in the art as to what the constraints are or what

the constraints could be on the variables F and N. For example, there is no disclosure

in the specification or prior art as to whether F and N are integers, real numbers, etc., or

if they have to be in a certain range (i.e. between 0 and 1).

Claim Rejections - 35 USC § 103

5.   The text of those sections of Title 35, U.S. Code not included in this action can

be found in a prior Office action.

6.   Claims 1-7, 10-12, 14-20, 23-25, 27-34 are rejected under 35 U.S.C. 103(a) as

being unpatentable over Kingsford et al. (U.S. 6,574,737), hereinafter referred to as

Kingsford, in view of Chang et al. (U.S. 6,526,433), and further in view of Porcaro et al.

(U.S. 5,699,511), hereinafter referred to as Porcaro.

7.   Regarding claims 1, 14, and 28, Kingsford teaches the use of risk assessment

scan modules extensively (for example, see Kingsford, col. 15, line 31 – col. 17, line

64), as well as the method of stopping a risk assessment scan based upon the

occurrence of a predetermined event, in this case, a time-out (see Kingsford, col. 17,

lines 29-37). While Kingsford does disclose the execution of a risk-assessment scan on

the target from the source (col. 2, lines 35-43) and the act of performing a risk-

assessment scan related time-out prior to making a determination that the target is

failing to respond to the risk-assessment (col. 17, lines 29-37), Kingsford is silent on

how to specifically implement the predetermined event, in this case a time-out (col. 17,

lines 29-37). However, Chang discloses the use of an adaptive time out value setting

applicable to computer applications, including the measuring of network conditions in a

network coupled between a source and a target (col. 2, lines 29-33) and the setting of

the variable duration value which is set by a function of the measured network

conditions (col. 2, lines 29-33). One of ordinary skill in the art at the time of the

applicant's invention would have found it obvious to use the risk-assessment scan

module method utilizing a time-out function as disclosed by Kingsford and in order to

implement and raise the efficiency of the time-out feature, an ordinary artisan in the art

would be motivated to use the adaptive timeout value setting for computer applications

method as disclosed by Chang. Because of the combination, a variable duration time-

out value is provided (see Chang, col. 2, lines 29-33) and the abandonment of a risk-

assessment scan is implemented (see Kingsford, col. 17, lines 29-37).

Communications between a client and a server are well known in the art, as well as the

implementation of time-out use. Chang discloses a time-out function that reflects on

environmental factors and communications conditions that can be applied to a wide

range of client-server applications in which time-outs are expected to happen (see

Chang, col. 7, lines 23-30). Kingsford, as stated above, discloses the use of a risk-

assessment scan between a target and a source, a client/server application, in which

Kingsford discloses is an environment where time-outs, or predetermined events, are

expected to occur (see Kingsford, col. 17, lines 29-35). It is for these reasons that one

of ordinary skill in the art would be motivated to combine the risk-assessment scan

module having the ability to stop based on a time-out as disclosed by Kingsford with the

adaptive time-out setting for computer applications method based on environmental

factors and communications conditions as disclosed by Chang. Chang discloses the

method of setting a time-out function as explained above, but does not specifically

disclose the step of setting the timeout value by adding a default value with a variable

value. However, Porcaro teaches a method of setting a time-out value by using addition

techniques (see Figure 5 and col. 6, lines 1-8) and setting the time-out value used in the

system by adding the value set (the default) with another time value (a variable value).

One of ordinary skill in the art at the time of the applicant's invention would have

recognized the usefulness of applying the addition method as disclosed by Porcaro

when setting a time-out value with the method disclosed by the combination of

Kingsford and Chang. One of ordinary skill in the art would have been motivated to

make such a combination because Chang provides an environment wherein multiple

embodiments and methods can be utilized in reference to statistical methods used to

setting optimal time-out values and Porcaro discloses explicitly a method which is

deemed a statistical method of setting an optimal time-out value.

8.   Regarding claims 2 and 15, in accordance with claims 1 and 14 as explained

above, Chang discloses the network conditions including latency associated with

communication between the source and the target (col. 2, lines 34-38 and col. 6, lines

26-34). The same motivation that was utilized in the combination of claims 1 and 14

above applies equally as well to claims 2 and 15.

9.   Regarding claims 3 and 16, in accordance with claims 1 and 14 as explained

above, Chang discloses the measuring of the network conditions including the

transmitting of a probe signal from the source to the target utilizing the network (col. 6,

lines 26-34). The same motivation that was utilized in the combination of claims 1 and

14 above applies equally as well to claims 3 and 16.

10.   Regarding claims 4 and 17, in accordance with claims 3 and 16 as explained

above, Chang discloses the probe signal prompting the target to send a response signal

to the source utilizing the network (col. 6, lines 26-34). The same motivation that was

utilized in the combination of claims 1 and 14 above applies equally as well to claims 4

and 17.

11.   Regarding claims 5 and 18, in accordance with claims 4 and 17 as explained

above, Chang discloses the measurement of network conditions further including the

reception of a response signal from a target utilizing the network (col. 6, lines 26-34).

The same motivation that was utilized in the combination of claims 1 and 14 above

applies equally as well to claims 5 and 18.

12.   Regarding claims 6 and 19, in accordance with claims 5 and 18 as explained

above, Chang discloses the measurement of network conditions further including the

measurement of a response duration between the transmission of the probe signal and

the receipt of the response signal (col. 6, lines 26-34). The same motivation that was

utilized in the combination of claims 1 and 14 above applies equally as well to claims 6

and 19.

13.   Regarding claims 7 and 20, in accordance with claims 6 and 19 as explained

above, Chang discloses the method wherein the time-out is set as a function of the

response duration (col. 6, lines 35-51). The same motivation that was utilized in the

combination of claims 1 and 14 above applies equally as well to claims 7 and 20.

14.   Regarding claims 12 and 25, in accordance with claims 1 and 14 as explained

above, Chang discloses the method further comprising storing a result of the

measurement of the network conditions (col. 6, lines 30-34). The same motivation that

was utilized in the combination of claims 1 and 14 above applies equally as well to

claims 12 and 25.

15.   Regarding claim 27, in accordance with claim 14 as explained above, Chang

discloses the product wherein the network conditions are measured for a network

segment, and the measured network conditions are used to set the timeout for a

plurality of targets located on the network segment (col. 2, lines 29-33 and lines 43-47).

The same motivation that was utilized in the combination of claim 14 above applies

equally as well to claim 27.

16.   Claims 29 and 30 contain identical limitations as disclosed in claims 1, 3, 5, 6

and 10, and are rejected under the same rationale.

17.   Regarding claim 32, in accordance with claim 1 as explained above, Chang

discloses the method wherein the timeout is set utilizing a plurality of network condition

probes that gather multiple network condition measurements on a single target (col. 2,

lines 29-33).

18.   Regarding claim 33, in accordance with claim 1 as explained above, Chang

discloses the method wherein the measured network conditions are measured for an

entire network segment on which a plurality of target components is located (col. 2, lines

29-33 and lines 43-47).

19.   Regarding claim 34, in accordance with claim 1 as explained above, the

combination of Kingsford and Chang discloses the method wherein the source is

capable of reducing a latency of the risk-assessment scan by setting time-out settings,

but does not explicitly disclose setting a time-out value to a minimum value. However,

Porcaro discloses the ability to set a time-out value to a minimum value setting (see Fig.

5 and column 5, lines 50-52). The same motivation that was utilized in the combination

of claims 1 and 14 above applies equally as well to claim 34.

20.   Claims 10-11 and 23-24 are rejected under 35 U.S.C. 103(a) as being

unpatentable over Kingsford.

21.   Regarding claims 10 and 23, in accordance with claims 1 and 14, respectively,

Kingsford discloses the method wherein executing the risk-assessment scan includes

executing a plurality of risk-assessment scan modules (see Abstract).

22.   Regarding claims 11 and 24, in accordance with claims 10 and 23 as explained

above, Kingsford discloses the timeout being performed for each of the risk-assessment

modules (col. 17, lines 29-37).

Allowable Subject Matter

23.   Claim 31 would be allowable if applicant properly traverses the 112 1st rejection

set forth above.

Response to Arguments

24.   Applicant's arguments with respect to all claims have been considered but are

moot in view of the new ground(s) of rejection.

25.   Applicant argues on page -11- of REMARKS filed 28 April 2005: "Chang teaches

away from measuring conditions "for an entire network segment on which a plurality of

target components is located" ". Regarding this argument, the Examiner respectfully

disagrees the fact that Chang *teaches away* from the claim idea, but however Chang

merely provides embodiments of a network system including network segments. It is

considered well known in the art that in client/server pairs, a network segment must

connect them in some way creating a path between them, and in this path it is quite possible for components to be positioned along the way, in this case, as claimed by applicant, the components could easily be called "target components".

Conclusion

26.   The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Kawasaki et al. (U.S. 5,734,641) disclose a device for discriminating timeout comprising an event discrimination unit, a calculation unit, a time storage unit, and a timeout discrimination unit.

Ludwig (U.S. 6,901,081) discloses a method for determining a parameter associated with a retransmission time-out feature in a data unit transmitter implementing a protocol.

Mizoguchi et al. (U.S. 5,978,939) disclose a timeout monitoring system including plural timeout value setting mechanisms.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Benjamin Ailes, whose telephone number is (571) 272-3899. The examiner can normally be reached Monday-Friday (7:30-5).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrew Caldwell, can be reached at (571) 272-3868. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Communications via Internet e-mail regarding this application, other than those under 35 U.S.C. 132 or which otherwise require a signature, may be used by the applicant and should be addressed to [benjamin.ailes@uspto.gov].

All Internet e-mail communications will be made of record in the application file. PTO employees do not engage in Internet communications where there exists a possibility that sensitive information could be identified or exchanged unless the record includes a properly signed express waiver of the confidentiality requirements of 35 U.S.C. 122. This is more clearly set forth in the Interim Internet Usage Policy published in the Official Gazette of the Patent and Trademark on February 25, 1997 at 1195 OG 89.

BEATRIZ PRIETO
PRIMARY EXAMINER

BAA